The Price of Citizenship: Corporations, Congress and Mineral Depletion in 1969

By Salman Somjee
Thesis Advisor: Prof. William Leach
Second Reader: Prof. Carl Wennerlind

Cited by Eberhard P. Deutsch, representative of the Permian Basin Independent Petroleum Producers Association; in Senate Hearings, 4557

The Price of Citizenship: Corporations, Congress and Mineral Depletion in 1969

In March of 2010 Topeka, capital of Kansas, decided to unofficially rename itself "Google" for a month, Topekans, for a brief month, agreeing to be transmogrified into Google-ians so that the technology behemoth would install extremely high-speed Internet for free. Bill Bunten, mayor of Topeka, saw his courtship of Google as a way to transform the image of his small Midwestern city, attract a younger demographic and thus incubate innovative businesses in the area.[1] At about the same time, the Supreme Court suspended the limits corporations could spend on political advertisements. The majority of the Supreme Court justices argued in *Citizens United v. Federal Elections Commission* that corporations are protected by the same First Amendment freedoms as American citizens. Critics of the decision, the President Obama among them, condemned the decision on the basis of the inevitable erosion of democracy as a result of it, while supporters encouraged the democratization of information that would better allow the voter to make an educated decision in an election.[2]

The naming of a city for a corporation recalls another period in history when vastly wealthy corporations dominated entire towns and cities and transformed the denizens of these regions into citizens of what were essentially corporate fiefdoms. In the same way, the idea that a corporation can have the right to sway voter opinion or punish intransigent politicians in the same way as regular citizens might is highly disconcerting. It seems that corporations have the potential to be, simultaneously, benign sponsors of

[1] Sutter, *CNN Tech*. CNN Online, 2 March, 2010.
[2] Kirkpatick, *New York Times*. New York Times, 21 January, 2010.

community and adversaries of democracy. This conflicted view of the corporation is not a new phenomenon in American history. Rather, the dual positions reflected by both these cases are emblematic of the still confused and inconclusive understanding about the role of the corporation in America. Through an analysis of tax law, we can better delineate the corporations' place in American society.

The corporation occupies an ambiguous legal space within American society and law. In America, the first corporations made their appearance in the 1730s as state-sponsored entities used as vehicles to perform public works. These entities existed based on the caprice of individual state legislature. In this embryonic phase of the corporations' growth, the state could withdraw its charter without notice and dissolve the corporation, and confiscate its property holdings. It was only after the 1819 in the *Trustees of Dartmouth College v. Woodward* case that Supreme Court justices determined that corporations had private interests that rose above the whims of states.[3] Even then, corporations were only allowed to hold property within the state that guaranteed their existence. The real transformation in the status of the corporation came as a result of the railway boom. Increasingly corporate entities configured themselves as joint stock, limited liability corporations as a means of raising capital. It was only with the liberal incorporation laws of New Jersey in 1889 that the modern corporation was truly born. Now, corporations were allowed to hold property in multiple states and with the triumph of Legal Realism able to behave more and more beyond their legally defined capacities,

[3] Mickelthwait and Wooldridge, 46-50

almost as though they were citizens.[4] The central question posed by the existence of the corporation relates to how it functions as a citizen and to what extent it can be governed by the same standards applied to other citizens of the United States. Legal historian Morton Horwitz argues that, "[i]n a legal system whose categories were built around individual activity, it was not at all easy to assimilate the behavior of groups."[5] Horwitz's central contention about the development of the idea of the corporate citizen or corporate personality was that it arose from an inability to reconcile the American discourse of individual rights with the massive wave of incorporation rushing through America in the Gilded Age.

Professor of Constitutional Law, Arthur S. Miller contends that the grounds upon which these individual rights are based have been eroded and transformed by the steady increase in a "corporate" understanding of the law. Miller calls attention to the rise of the "corporate state" in which all activities are organized around the understanding of collective behavior expressly because of the domination by corporation of the political economy. He argues that Constitutional law has undergone a subtle shift because the Supreme Court no longer decides economic legislation but its decisions have focused on civil rights and liberties, "in short, the position of the individual in an age of collective action." Through its control of vast quantities of assets and economic behavior, and the

[4]Micklethwait and Wooldridge 67-68; Horwitz, 75-79, 170; Horwitz's discussion of Legal Realism is best summarized by his claim that "Realism is a continuation of the Progressive attack on the attempt of late-nineteenth-century Classical Legal Thought to create a sharp distinction between law and politics and to portray law as neutral, natural, and apolitical." The main contribution of this method of thought was a reliance on context to inform judicial distinctions rather than transcendent legal concepts.
[5]Horwitz, 74

complicity of the "positive state," *supercorporations* have transformed the very essence of law. [6] Miller's profound ambivalence about this development stands in stark contrast to the triumphal optimism of historians John Micklethwait and Adrian Wooldridge who state that, "[t]he most important organization in the world is the company: the basis of the prosperity of the West and the best hope for the future of the rest of the world."[7] As a result of this peculiar relationship, theorists have proclaimed the death of the nation state because of the parasitic relationship of the corporation to it, the understanding being that as the state cedes more and more power to the corporation, the less effective the state is able to be. Yet corporations do not simply get the laws they want; rather, there is a greater complexity to the way that governments interact with corporations.[8]

In truth, the development of the modern nation state was coeval with that of the corporation; the Portuguese, Flemish and British chartered enterprises show a clear lineage of the symbiotic roles played by governments and corporations. This is abundantly clear in the structure of the colonial enterprises of these same states. The close relationship between corporations and governments foreshadowed the development of more recent forms specifically government-driven enterprises like that of the *zaibatsus* of Japan.[9] This dynamic reached its apogee in the American case and set a new standard by which this relationship would continue. Historian Alfred Chandler acknowledges that the relationship between the government and corporation has always been a complicated one. Of course, corporations had played a key role in a number of economies and indeed

[6] Miller, 14, 18
[7] Micklethwait and Wooldridge, xv
[8] Lipartito and Sicilia, 20
[9] Micklethwait and Wooldridge, xvii, 18-24, 88-96

transformed the nation state with their very existence, but Chandler states that it was the modern business enterprise that truly transformed America; by providing jobs, connectivity, cheap products, and lower transaction costs, it placed America at the center of the world economy. For Chandler, the modern business enterprise only came about as a result of the increasing reliance on mangers and structural reorganization that moved corporations away from the family- or partner-ownership structure. By this definition, no industry was more important to the development of modern America than the railroad. Not only did it transform the American landscape, it fundamentally altered the relationship between the state and the face of American modernism. The railroad essentially allowed managers to control the supply and production of products, circumventing the power of the market in determining output if not demand. [10] As a result of this, the government itself was transformed into a sort of manager for the corporation itself by "maintaining full employment and high aggregate demand" to support the growth of the corporation guaranteeing a market for the sale of their products.[11]

As technology transformed the shape and distribution of demand, making the railroads obsolete, this governmental intervention was applied to other industries. The true heir to the transformative power of the railroad in America was the oil industry. No single resource has been imbued with more cultural, economic or strategic significance than oil. Perhaps the first indication of this change was in 1872 when John D. Rockefeller's Standard Oil Company colluded with the Lake Shore Railroad in an attempt to destroy his competition by fixing favorable rates with the rail company,

[10] Chandler, 1, 10, 90, 120
[11] Chandler, 495

effectively monopolizing transportation channels. Rockefeller realized the necessity of a well-established transportation network to guarantee the continued prosperity of his own enterprise, a point cemented by his integration of the Standard Steel Car Company into the infamous Standard Oil Trust.[12] This shift reflected a new reality for America: railroads became important insofar as they assisted in the transportation of the new commodity necessary for living in the modern age – oil.

The remarkable feature of the American oil industry is the notable absence of the government's direct involvement. Of course, the modern national oil company is a comparatively recent development in the history of the industry, but American firms never had the governmental mandate that British and Dutch governments provided British Petroleum (now BP) Royal Dutch Shell. Instead the American government worked in a more subtle way to influence the behavior of oil firms, for instance, the ad hoc political arrangements between the American and British governments over the Perso-American Petroleum Company where the force of the State Department guaranteed the private interests involved in the stabilization of the North Khorestaia region of Persia in 1922.[13] These arrangements were more than simply political. As foreign oil operations became more and more sophisticated, a whole new series of financial measures were put in place to bolster the power of American oil firms and thus America herself in terms of fuel security.

[12] Chandler, 321, 359
[13] Hogan, 187-205

One of the principle financial tools used by the American government was the tax code. While taxes are a fiscal tool for governments to finance their existences, a favorable tax position is a handy financial implement for corporations. Much analysis has acknowledged this relationship but has stopped short of fully interrogating its implications. Changing the tax code necessitates a change in the relationship between the state and the taxpaying citizen and it is for this reason that it might be useful to contextualize these tax tools. One such rule – the mineral depletion allowance - is about as old as the Federal Income Tax; it was instituted in 1926, just thirteen years after the inception of the Federal Income Tax in 1913 and ostensibly recognized the fact that oil and gas developers relied for their incomes on a depleting asset that was risky to locate. Much wealth could be spent digging holes in the ground that contained no oil deposits whatsoever. The allowance permitted the owner of a producing oil property to deduct 27½ percent of his gross income to minimize the size of his taxable income up to a limitation of fifty percent of net income before taxes. The smaller the size of taxable income, the smaller the incidence of federal taxes paid. The allowance itself was supposed to allow the developers who had taken on the uncertain business of finding and developing oil properties to recover the vast amounts of capital they had expended in locating these reserves.[14]

As a result of the crucial role played by oil in the Second World War, a number of tax incentives were given to the oil industry to locate and develop a steady stream of oil domestically and overseas. This, in turn, led to the development of the foreign tax credit,

[14] Senate documents give a brief history of the initial impetus for the development of the mineral depletion allowance; Senate Hearings, 76

which allowed American oil companies to deduct every single cent paid in foreign taxes from its gross income – thus reducing its overall taxable income.[15] This particular credit came under especial scrutiny in the case of Saudi Arabia in 1950 when the total amount paid in taxes to the Saudi Government was more than was paid to the American government.[16] The mineral depletion survived intact through the tax reform of 1954, and was actually protected by the Kennedy administration for the same reasons as his revolutionary investment tax credit in 1962 – healthy industry was stimulated by the proper incentives, and healthy industry was what allowed America to be distinct from the Soviet Union.

In addition to these official tax breaks, the industry attorneys developed new methods to extend these allowances to more industry participants. An example would be the use production payments to finance oil properties, which developed out of a series of rulings from the Supreme Court and Tax Court, dating as far back as 1932. These production payments became known as the ABC transaction. The ABC transaction was a method of property conveyance that separated the sale of an oil property into two parts, an operating interest and a production payment, that would be sold to two different parties. The transaction was designed such that both parties qualified for the depletion allowance. Clearly the United States "relie[d] far more heavily on the tax code as a means of shaping the direction of private sector investment than any other nation except Japan."[17] Thus any kind of change in the tax code needs to be addressed as an issue of

[15] Yergin, 658
[16] Schulzinger, 200
[17] Vogel, 115

national significance. When the House bill was introduced to the Senate in the fall of 1969 with a depletion allowance that had been cut to twenty percent from 27½ percent, coupled with an amendment that treated the sale of a production payment as a loan on top of a whole raft of other changes, it was clear that there had been a sea change in the way that the tax privileges of the oil industry were being treated. In the reconciliation between the House and Senate bills the maximum rate for statutory depletion was set at twenty-two percent, but the treatment of production payments was transformed.

The tax reform of 1969 brought all of these issues to head. Legislators clearly pandered to the special-interest constituents, but the fiscal crisis of the late 1960s forced them to reassess the position of the corporation through the manipulation of the tax code. The House Committee on Ways and Means must originate any bill having to do with revenues. The Senate finance committee must address the conclusions reached in the House bill before it can be passed into law. I argue that it is through a manipulation of the tax code and its reformulation we can understand how legislators conceptualize the corporation. Nowhere is this clearer than in Congress's treatment of tax breaks in 1969. In particular, the mineral depletion allowance accorded to extractive industries in America, the chief beneficiaries of which were the oil companies, or, as President Obama himself put it "big oil." [18]

***

[18] Liptak, *New York Times*. New York Times, 21 January 2010.

The Tax Act of 1969 was not meant to be a revolutionary document. If anything, the adjustment of the corpulent tax structure of the United States was a complete accident. Historian Allen Matusow argues that it was Richard Nixon's horse-trading with House Democrats that sparked off the cause of tax reform.[19] Be that as it may, the tax reform of 1969 yielded a number of very surprising results particularly with regard to one of the "the most notorious loophole[s] in all the tax code – the 27.5 percent depletion allowance for the oil industry"[20]. Indeed by the end of the reconfiguring of American tax laws the depletion allowance, which ostensibly encouraged domestic discovery and drilling of oil, had been reduced to twenty-two percent. This outcome was alternately viewed as a triumph against the entrenched interests of a business that had grown too large, over-bearing and arrogant for its own good, and as a defeat against the same antagonists because it had not gone far enough.

If one wanted to think of the tax reform of 1969 in martial terms, as some historians most certainly do, then the real casualty of the process was the ABC transaction, outlawed by the 1969 act. Few debates display as clearly the importance that the tax code plays in determining the rightful role of the corporation in America. The tax code clearly indicates the rights, responsibilities and place of citizens, and is more than a fiscal tool by which the government secures its continued existence.

A clear example of this is evident in the case of the railroads in West Virginia in the 1880s. Furor erupted over railroad companies that had not paid "their fair share of

---

[19] Matusow, 41, 42
[20] Matusow, 48

taxes." These companies had negotiated incorporation contracts that kept them from paying taxes as long as their net incomes were less than the amount they had invested in capital for the year. As long as they kept their self-assessed levels of capital invested above their net incomes, they did not pay any state taxes. They had managed to do this despite specific references in the state constitution that barred the legislature from granting exemption of these payments to railroad companies.[21] However, even after the Supreme Court had acknowledged the illegality of these actions, these same companies continued to avoid paying taxes, aided by a legislature that was far friendlier to the railroad barons than the law. Of course, this analysis assumes that the legislature and industrialists were discreet entities, when in fact industrialists moved between private and public capacities fairly frequently. The crux of the opposition to the favorable treatment of the railroad companies articulated by the West Virginia Tax Commission's report of 1884, was that state taxation policies be borne equally by all parties in the state. Corporations exercised privileged tax positions even though they were not domiciled within West Virginia and could easily relocate once the environment had been denuded of resources. Citizens felt that the government had a responsibility to them, enacted through the tax code, that involved both them and the railways rather than the advancement of the rail companies at the expense of farmers and miners employed by these companies.

The taxable status of the oil corporation is clearly part of a larger historical debate about the social place of the corporation in America. I believe that the question of what

---

[21] Lewis, 61-67

the appropriate rights and responsibilities of a corporate individual are seems never to have been adequately answered. The 1969 tax reform gives us some insight into the ways in which legislators and oil corporations themselves have sought to answer this question.

The historical debate over the place of taxation revolves around the work of two camps that I term the social and the political-economic. Within the social school of taxation, tax policy is the battleground for competing social interests. This school argues that the state *ought* to intervene in matters of taxation for the social good. Indeed if it did not then the formation of tax policy would rely on the competition between different groups in society for concessions from the state. The Progressive historian Sidney Ratner is a major exponent of this school. He wrote during the onset and development of the Cold War, and saw taxes as a necessity for the continued strength of the United States against the onslaught of Soviet-style communism. A healthy taxation system defended the moral virtue of the Unites States, a moral virtue that was premised on the idea of an equal society. The taxation system could not be healthy as long as "the desire for individual profit outweighed concern for social welfare on the part of the powerful business classes."[22] It was a moral imperative for the United States legislature to strive towards a taxation system that was "fair". For Ratner, what was "fair" was any act that promoted the "social good," a rarefied concept that he does not define beyond the observing that American society should embrace equality.

[22] Ratner, 9, 250

Ratner placed taxation within a moral realm that stood in stark contrast to the detached analysis of the political-economic school espoused by historians and political economists who tend to think of tax policy "as a macroeconomic tool through which expert officials could stimulate national economic growth or restrain excessive expansion."[23] Within the framework of this school the roles of citizen and state are clearly delineated and taxes are simply a neutral tool by which the modern bureaucratic state organizes and is organized. This school focuses on the exigencies of running the state while ignoring the social dimension of the policies it pursues. Political scientist John Witte epitomizes the political-economic outlook. He argues that if the goal of tax policy is economic management then it ought to be insulated from political processes because "*no one* controls tax policy and that the tendency is for politicians to confer as many benefits on as many groups as is politically feasible."[24]

Witte supports a politically neutral tax policy rather than the clash of partisan objectives. For him, the existing method of creating tax laws logically leads to partisan infighting. For instance, the House Committee on Ways and Means – the principle body for initiating any kind of tax program – was, after 1911, the Democratic Committee on Committees and thus made all committee appointments for members of the Democratic Party. Historian Julian Zelizer points out that House speaker Sam Rayburn (D-TX) and Chairman of the Ways and Means Committee Robert Doughton (D-NC) "allowed only Democrats who supported the oil tax break to be placed on Ways and Means. Mills was no exception to that rule, and understood the need to protect the oil industry from any

[23] Zelizer, 15
[24] Witte, 21, 22

drastic change in the tax code."[25] These actions of the Democratic Party beg the question: from what is the oil tax break being protected? Republicans? Public interest lobby groups? Zelizer and Witte both point to the fighting between different groups as being foundational to the formation of tax policy. Witte, somewhat more idealistically than Zelizer, claims that there ought to be a way that the tax system should function for some kind of perceived social good and in this sense flirts with but never directly engages Ratner's realm of the social school.

Perhaps the biggest failing of the political-economic school is that it takes for granted that taxes can be used simply as a tool to accomplish overarching governmental goals without fundamentally altering basic relationships between the state and her citizens. These political scientists often depict taxes as a state confiscation of purchasing power. In doing so, they fall into the trap of neo-classical economics, by underestimating the meaning of monetary transactions. Neo-classicists assume that money is simply a medium of exchange and store of value, and not also a nexus that communicates a certain set of relationships, or that it relies for its use upon a network of transactors that accept it as legal tender.[26] As per sociologist Nigel Dodd's argument: "Trust in money's abstract properties is, by extension, trust in those agencies responsible for monetary administration. Trust in this sense partly depends on the political legitimacy of the state in question."[27] Money and all monetary transactions are embedded within a discourse on the role of the state and the grounds upon which it enables these transactions. Taxes are

[25] Zelizer, 36
[26] Dodd, 13, 15
[27] Dodd, 27

the means through which it controls this relationship. Supreme Court justices and legal scholars at the turn of the nineteenth century understood that taxation contained the power to transform these very institutions, which is why the "power of taxation presented the most formidable difficulties for nineteenth century jurists intent upon establishing a neutral state by limiting the redistributive capacities of government."[28] The payment of taxes, mediated through the transfer of money, is an affirmation of this trust in political institutions and a means of enacting citizenship. The central government could not stand by unmoved and unmoving in the transformation of tax relationships; it was, by default, deeply implicated within them. Taxes and tax reform must be interpreted in this light.

Put in this context, tax breaks can only be seen as state intervention in private enterprise. Historian Christopher Howard draws attention to the way that tax breaks can be construed as "tax expenditures," essentially even though the government does not spend money directly in the pursuit of achieving an outcome; foregoing income that could be collected from taxation is tantamount to a direct expenditure. He argues that, "tax incentives inevitably favor certain groups and activities, which means that government is selectively influencing individual and corporate behavior."[29] This intervention rankles, particularly in the American case, because of the conflicted status of the government. In his work on Wilbur Mills, Head of the House Committee on Ways and Means from 1957 to 1975, Julian Zelizer makes a key point about the peculiar role of taxes and income tax policy in America: "Mills wanted to help maintain the presence of a federal government that adhered to the nation's anti-statist, individualist, and fiscal

[28] Horwitz, 20
[29] Howard, 4

values."[30] Indeed in Zelizer's view "anti-statism and a devotion to minimal taxation imposed limits on state-building."[31] The government of the United States is placed in a very odd situation: taxes are collected on the basis of the what the government is supposed to provide its citizens, but what it is supposed to provide is a minimally invasive state which relies for its upkeep on the collection of taxes. Taxation thus forms a strange space within the political, economic and social lives of its citizens. From a deeper understanding of the role of taxes we can infer properties of the relationship between the American State and her citizens who are construed as taxpayers.[32]

In sum, taxes do not simply confiscate purchasing power; they communicate a precise set of relationships between the state and the citizen, an understanding of the responsibilities of each to the other. Tax legislation exists to finance a state that presumably exists for the benefit of everyone and strives towards a "social good" or a "fair" society. Although we cannot take these concepts for granted, as Ratner does, I believe that through an exploration of taxation legislation, we might get a better insight into the way that the state works out what the social good might be and for whose benefit. This is explicitly a relational dialectic; the state is at once working out what its own role might be and how to fund itself based on what it can rightfully demand of its citizens. If we accept that taxation codifies this process then the question of why Congress reduced depletion rather than eradicated it, as it did the ABC transaction, becomes one of money

[30] Zelizer, 21-22
[31] Zelizer, 8
[32] There is an elision in the concept of taxpayer for citizen, as though they were a single identity. This in turn affects how we are to think about American citizens who do not qualify for one reason or another to pay taxes – a topic worthy of much more analysis than it is possible to give in this paper.

and morality, firmly placed at the interstices of the relationship of the state and citizen. I would not have the reader believe that tax reform necessarily leads to “fair” conclusions. What I do contend is that the discussion of what this “fairness” or “social good” is, is what legislators and taxpayers try to come to better terms with in any discussion of taxation. This study argues that if crucial reconfigurations of the roles and responsibilities of citizen and state actually do occur during any kind of tax reform and particularly, then the 1969 tax-reform certainly exemplifies this process.

Good Corporation, Bad Corporation: Majors, Independents and Tax Reform

I fail to see that there would be any breach of faith on the fact that we consider changing the tax structure any more than there would be if we change the corporate rate or any other tax. I realize you have got a great industry and I respect you and I respect your right to come and argue for it. But like the Senator from New Mexico I do not think it is any breach of faith. I do not think you have any inherent right or constitutional right for this tax break forever. There is nothing sacred in the 27½ percent. It could be increased or lowered as Congress sees fit

Senator John J. Williams (R- DE) to George Myers of Standard Oil Co. of Indiana[33]

Senate hearings are, on the whole, dull affairs, and hearings on taxes probably compete with pharmaceutical sedatives in their potent soporific effect. That is, until a moment like the one above where Senator John Williams vehemently objected to George Myers's accusation that, by changing the tax allowance, U.S. Senators were violating some covenant between oil corporations and the American state and implied that the government had somehow failed to live up to its promises to the oil industry.[34] The allegation was clearly rooted in some understanding about the assumed relationship between the government and oil companies – an assumption quickly repudiated by Senator Williams. It is immediately obvious in this extract that in order to answer the question of how much a corporation can be taxed, and how much it should be taxed, and on what grounds this taxation can be justified, legislators needed to figure out the place of the corporation in American society.

---

[33] Senate Hearings, 4412

[34] The entire vocabulary of this debate is fraught with tension. Oilmen almost all referred to the tax benefits received as "incentives" whereas a number of its opponents called them "tax breaks" or the more nefarious, "loopholes".

In seeking to answer this question, it became clear to both legislators and corporations that the oil industry could not be treated as a monolithic bloc. All oil corporations justified their tax breaks on the basis of their contributions to American society broadly. Yet even while they initially jointly objected to the tax reform, as the hearings progressed, the line between majors and independents within the industry became increasingly clearly drawn and this determined the shape that tax reform took. I argue that this break became increasingly more serious because of the peculiar standard by which legislators determined the fairness of the tax breaks held by the oil industry. This standard, which sought to reduce citizens and corporations to some lowest common denominator such that individual tax breaks could be compared, oversimplified the roles played by the different types of oil corporations and necessarily led to fractures. That corporations and individuals did not behave in the same way was a truism that became increasingly clear. The remarkable outcome of this legislation was that it realized the fact that even oil corporations do not behave in the same way relative to one another, and in attempting to cast the debate about taxes in these terms legislators' approaches became increasingly arbitrary and turned the debate into one about the roles of small against big firm and this in turn dictated the course that reform would take.

The very way in which legislators conceptualized the corporation reproduced their inability to determine its place in American society. Legislators saw the granting of these tax breaks in terms that directly related to the concept of citizenship; it was, however, a very constrained definition of citizenship, one that could only be understood in financial terms. This conclusion produced its own set of problems, namely how to reconcile the disparity in financial contribution between an individual and a corporate entity. In the preamble introducing H.R. 13270, the bill before the Senate, Senate hands stated that, "percentage depletion is symbolic of a preference-prone tax structure that discriminates against persons whose incomes are wholly or principally from fully taxable wages and salaries."[35] The choice of the word "discriminate" to explain the inequity of the existing tax system is illuminating. The implication in this scenario being that the presence of tax privileges that were available to oil corporations but not regular citizens was somehow a violation of the right of the citizen. More than this, however, this passage equated conceptually corporations, which earned revenue, and individuals who earned salaries; fair outcomes could only come about when there was equity of financial opportunity between these two completely different entities. This standard of fairness showed Congressmen and Senators attempting to understand the relationship between corporations and individuals through the common denominator of financial standing, which transformed the question of the corporation into simply one of scale; corporations should be thought of as extremely wealthy citizens.

This financial/economic way of thinking about fairness made it possible to quantify the social good and reduce it to financial terms: the social good was anything that equalized the access to tax privileges. Within this framework, low prices were equated with the social good, certainly a facile conclusion, which nonetheless found its supporters. Congressman George Bush (R-TX) was certainly a big proponent of this argument, in his statements against the attack on the existing tax breaks, he pointed out

[35] Senate Hearings, 77

that while attacking oil industry tax breaks might seem like a progressive step in the direction of tax equity, its real results would be "a form of really regressive taxation. I think the burden is going to fall more on the little man that has to drive to work to hold his job."[36] This same argument was taken up in the Senate Hearings by Robert Dunlop of Sun Oil Company, who argued, "The real beneficiaries of percentage depletion have been the American consumers, who have had an ample supply of energy at reasonable prices."[37]

Even as Bush and Dunlop accepted the ludicrous conclusion that low prices were the same thing as economic welfare and that somehow tax breaks to the oil industry promoted the rights of citizens, their testimonies point out a crucial distinction between the individual citizen and the oil corporation – citizens did not and do not play the massive roles in the real economy that corporations do. In fact, the corporation is an altogether different beast than a regular citizen. Actions taken out on businesses necessarily have far-ranging and hard to predict consequences. To equate citizens and corporations was clearly a departure from recognizing that citizens and corporations played different roles in economic and social roles in America. Dealing with the tax privileges of the corporations was always going to be a balancing act that would require legislators to decide where the corporation stood vis-à-vis other American citizens because of the way the corporation was embedded in the lives of the state and her citizens.

---

[36] Congressional Hearings, *1969*, 3311
[37] Senate Hearings, 4401

In fact, it was because of this confusion over the role of the corporation that it became possible for the advocates of the oil companies to paint all of their actions as performing their duty to the government of the United States. Nowhere is this clearer than in the case of defense. The theme of the oil company providing a bulwark against foreign aggression through ensuring defense was a pervasive one in nearly all the speeches of the oil companies. The president of Sun Oil Company argued that, "We have met the current needs of this Nation, and have also helped meet the emergency needs of friendly nations on three occasions since World War II when their supplies of petroleum were interrupted."[38] Every person at the hearings was aware of the role of oil in defense during World War II when the fates of many battles had been decided by fuel security. Intense German U-Boat activity in the Atlantic had provoked the construction of the major pipelines, Big Inch and Little Inch, that linked the Southern American oil states with the East Coast so that oil could be transported overland instead of running the risk of disruption by German forces; oil was one of the major commodities included in the Lend-Lease arrangement with the British who were perpetually short of oil supplies. In order to secure the oil companies' participation in these schemes, significant amounts of political maneuvering had guaranteed an increase in the price of oil through programs such as the PAW. Additionally, it was a well-established fact that the German campaign in North Africa under General Edwin Rommel had been stymied by the lack of access to oil.[39] This was a theme that even the independent producers reiterated. "National security, economic progress and the interests of U.S. consumers would be served best by rejecting

---

[38] Senate Hearings, 4401
[39] Yergin, 369-378, 343

all proposed adverse changes in oil and gas tax provisions," observed the president of True Oil Company, H.A. True Jr., true indeed. [40]

For a country that was still smarting from the sting of Vietnam, tensions in the Middle East and the ever-present threat of a combative Russia, the issue of national security was fundamental to understanding legislative responses to the arguments. Oil had played a decisive role in all major conflicts of the U.S. up to that point. The backbone of U.S. fuel security during the war had been premised on heavily encouraging domestic supply and manipulating New Deal market controls to spur high production. Senator John G. Tower (R-TX) of the Senate Armed Forces committee was very clear on the point that "national security dictates that we have in existence petroleum resources capable of satisfying our needs… The only way of ensuring an adequate domestic petroleum supply is through a healthy domestic oil and gas industry."[41] The mineral depletion allowance was the "first effective incentive" to encourage the search for more oil reserves and for that reason ought to continue to be preferred. Senator Tower's argument in conjunction with the arguments of a number of major oil firms relied on the falling reserve ratio of American oil.

In the discussion of the role of oil supply and defense, the problems with dealing with the oil industry as a single unit became increasingly clear. The focus of the arguments about defense brought to light significant changes that had occurred to the oil industry since the 1940s, namely, that by 1969 America was increasingly consuming

[40] Senate Hearings, 4510
[41] Senate Hearings, 4388

larger and larger amounts of foreign oil and that by 1970 it would become a net importer of oil. When mineral depletion was instituted in 1926, America had been the world's biggest exporter. Depletion allowances were designed to encourage domestic discovery to guarantee America's domination of the oil export industry. Legislators, in order to justify their assault on tax incentives, needed to draw a line between different types of corporations. They needed to decide which firms actually contributed to the security of the nation. This allowed for a real appreciation of the difference between the independent oil companies and the vertically integrated majors. If fuel security was the main justification for depletion, then the only companies that could claim to aid in securing America should have been the domestically domiciled independents.

As far as Senator Proxmire (D-WI) was concerned, the depletion allowance exacerbated the problem of American fuel security. This was because the majors – the only firms with the financial resources and political contacts to be able to drill overseas – used the depletion allowance to minimize their taxes paid on all fronts. This made foreign oil cheaper relative to domestic oil and increased the allocation of capital to the majors and the reliance on foreign oil.[42] Thus American taxpayers had been subsidizing the lifestyles of foreigners who happened to own a natural resource that was essential to American life. In fact Proxmire argued that the mineral depletion allowance and intangible drilling expensing had also provided domestic producers with the incentives to develop overseas because it was an allowance that major oil companies overseas

[42] Senate Hearings, 4223

frequently used to minimize the size of their taxes.[43] Proxmire singled out the majors as targets in this tax reform because they did not actually provide the fuel security that they purportedly offered. That oil corporations provided this essential component of American life was clear, but the proceedings also clarified that the conceptual differences of oil corporations from regular citizens; not only that, but that within the industry itself there were fault lines based on the size of the oil companies in question.

These distinctions of place manifested themselves in the way that oil corporations presented their defenses of the tax savings. Oil firms attempted to depict themselves as stand-ins for American society, as if by proximity to American citizens, they could be identified in the same way. It is no surprise that the oil companies that were able to do this most successfully were the independent oil firms in contrast to the majors. The Senators and Congressmen of domestic oil states expounded the idea of the independent oil company as civic unit. The independent oil companies were able to paint the looming tax changes as a civic disaster with immediate consequences.

> Senator Hansen (R- WY): I am told by the people of my State that perhaps 90 percent of the independent oil activity – an activity which has brought the discovery of between 75 and 80 percent of all of the new reserves in this country, exclusive of those on the Outer Continental Shelf – that if these tax proposals are enacted about 90 percent of the independents will go out of business. What will be done to provide jobs in my State and in other oil-producing States for those who will be unemployed because such a significant portion of the oil industry will be out of business?
>
> Secretary Kennedy: That is a very leading question, Senator, because I do not believe that 90 percent of them will go out of business[44]

[43] Senate Hearings, 4211
[44] Senate Hearings, 543

The changes in tax breaks were understood by the independents as an arrow pointed directly at the heart of the domestic oil industry. A change in depletion and reclassification of the production payment seemed specifically targeted at the domestic oil industry. The domestic oil firms were much smaller than the major firms. They had far more limited financial resources at their disposal than, say, Standard Oil of New Jersey. It was to them that the highly risky business of locating oil fell, for "when independents weren't drilling, U.S. reserves began to decline."[45] The real victims in the case of eliminating percentage depletion, were not the majors but in fact the downtrodden independents. It appears as though independents were aware of this victimized position. In a documents submitted by True Oil Company, an analyst writes, "the impact of all the proposed tax changes on the independent producer's funds and incentives would be far greater than the estimated twenty percent reduction for far larger companies. We estimate in aggregate, a forty percent reduction in expenditures for exploration and development activities by individual independent producers in the twelve to twenty-four months following adoption of the proposed tax changes."[46] The division in the interests between the majors and independents was clearly drawn because of their conceptual distance from American society.

The statements of Myron Wright confirmed this distance. As the Chairman of Humble Oil and Refining Company[47], he supported the status quo because of the great advantages conveyed by the oil industry – "petroleum has brought us from the horse-and-

---

[45] Goodwyn, 127
[46] Senate Hearings, 4487
[47] Humble Oil was majority-owned by Standard Oil of New Jersey and eventually merged with SONJ to form Exxon

buggy days to an age of jets and spaceships."[48] The entire progress of the American nation was thrown into further relief in Bob Dorsey's testimony about the legislative history of America. Dorsey lionized the year 1926, the year of the depletion allowance's inception, and also "the year that Henry Ford's 'Tin Lizzie' really reached a peak. The 'Model T' was the people's automobile." He thus equated the cause of America with the progress of the oil industry. Indeed Dorsey's entire testimony was designed to locate the cause for American modernity in the petroleum industry. Oil "made possible a whole new set of freedoms permitting our population to move about easily, increasing everyone's opportunities for education and jobs, expanding their choices of a place to live, and providing new and wonderful recreational possibilities."[49] The main rhetorical flourish taken up in these arguments was essentially to demonstrate that the continuity of the very American way of life was dependent on a continuation of the current tax policies. In a sense, these companies saw themselves as providing a social benefit just by going about their business, their very existence guaranteeing a certain way of life to which Americans had grown accustomed. They were fulfilling not just a corporate motive but enacting a civic duty through their operations.

In contrast to the majors' more sweeping claims about an American civilization and the language of technological progress, the independents focused on the fact that they were so deeply embedded in their societies that any challenge to tax structures would necessarily have adverse effects on society because of that relationship. Texas, home to the richest known oil resources in the United States up to that point, had a vested interest

[48] Congressional Hearings, *1969*, 3165
[49] Congressional Hearings, *1969*, 3176

in any kind of legislation that would affect the oil industry. A number of independent producers' associations were located in Texas. It was the president of one of these institutions – Donald Watson of the Panhandle Producers and Royalty Owners Association who claimed that, "In our area the petroleum industry contributes a large share of funds to support educational and other services of State and local governments… Any reduction or loss of the 'mineral depletion' provision would create a serious financial crisis for our school as well as our State and local governmental agencies."[50] By identifying the interests of the oil companies with their societies, Watson built on the "social capital" of the independent to push forward his argument.[51]

The debate over depletion was more than one of financial incentives or financial equality, for lawmakers it became one about the very existence of the American state and the roles of oil corporations in guaranteeing its continued existence. If the declamations of the various firms proved anything, it was that oil companies were qualitatively different from regular citizens and had to be treated as such. Even as Congress attempted to quantify the contribution of the oil companies, they increasingly came up against the limits what this quantifying would achieve. The concept of what was "fair" eluded the characterization of the social good as simply low prices. While it is clear that the oil companies conceived of their contributions to American society in financial terms, their ideas of what their contributions to fellow Americans ought to be and what their opponents thought were very much at odds**.** The way to deal with these companies had to be determined by a more expansive meaning of justice and fairness than simply

[50] Congressional Hearings, *1969*, 3278
[51] Goodwyn, 130

equalizing financial opportunity or access to tax breaks. The counterpoint to the American oil companies and their political supporters were senators such as the acerbic William Proxmire (D-WI) who pointed out that the stakes of tax breaks were much higher than the oil companies were willing to accept. These lawmakers took a much more expansive view of the tax breaks the oil companies, in that their viewpoints were bolstered by the bleak economic outlook of the late 1960s.

The American economy in the 1969 was in the heat of an inflationary spell put down to the massive increase in governmental expenditure in response to the Vietnam War and President Johnson's war on poverty.[52] In his address to Congress on 3rd August 1967, President Lyndon Johnson had warned Congressmen of the looming deficit and the need for it to be dealt with by a combination of borrowing and taxation. Johnson's suggestion of a surtax on individuals and corporations were what had sparked the Nixon tax reform in the first place.[53] In 1967, there had been a number of objections to Johnson's proposal because it did not suggest an equitable way to close the budget deficit. The surtax was regressive and placed the costs of macroeconomic stability on American citizens. The most vocal critic of the surtax Congressman Herbert Tenzer (D-NY) who suggested that massive deficit should be dealt with through cutting back on tax loopholes extended to various different industries – particularly the oil industry.[54] However the issue before Congress in 1967 was not a reform of the tax code, but merely to decide whether to push through Johnson's surtax in the fiscal year 1968, these

---

[52] Matusow, 13
[53] The surtax was a tax on the amount that people would pay in taxes, not income. Thus, a 10 percent surtax on an tax amount of $1000 would simply be $100.
[54] Congressional Hearings, *1967*, 288

criticisms never managed to be taken seriously. By 1969, however, because the surtax had proved to be ineffective in raising sufficient revenue, taxes and tax breaks had to be discussed in terms of how they would fan these inflationary fires.[55] Unlike defense, economic primacy was a governmental problem that could not be left to the vagaries of private contractors. The first people to admit that the current tax treatment inflated oil property prices were, oddly enough, the oil producers themselves. In arguing for the retention of the legality of the ABC transaction, Netum Steed of the Texas Independent Producers and Royalty Owners Association (TIPRO) claimed that sellers of oil properties were able to "get a much better price because of the ABC provision."[56]

The debate over the role of taxes exposed the blatantly different standards to which oil companies needed to be held. If oil firms received such largesse from the government, then surely they had to pay for it. In a typically biting commentary Proxmire overrode the defense argument of the major oil companies. Emilio Collado – Executive Vice President of SONJ – submitted a list of countries and the respective tax breaks that they gave to oil companies to encourage oil development as a means of proving that American companies would be handicapped if their tax treatment were to be altered[57]. Although not responding directly to this document, Proxmire clearly pointed to the paradox of the situation, "If I were of an ironical frame of mind, I would say that these bastions of free enterprise – the major oil companies – were actually encouraging

[55] Senate Hearings, 4225
[56] Congressional Hearings, *1969*, 3295
[57] Senate Hearings, 4451-4454

socialism."[58] This is a theme that Vogel also elaborates on when he suggests that "American businessmen, throughout most of their history and particularly over the last forty years have proven incapable of understanding adequately the economic and political requirements of the socioeconomic system upon whose political stability and economic growth their own social existence rests."[59] Proxmire, beyond his disavowal of the tax breaks in front of the Senate, never actually articulated in positive terms the basis for his characterization of the relationship between firms and the government as socialist. Beyond gesticulating about the unfairness of the tax break, he never delineated what the relationship ought to be. In fact, the debate about the tax breaks seems to have been limited by this very oversight.

It seems that as confused as corporations were about their status, lawmakers were equally unsure of where they stood on the issue. While American oil firms were very expressive and imaginative in explaining their position in society, they refused to understand that this position relied on a specific set of governmental policies that privileged their industry. Proxmire pointed out that as much as American companies were a part of their societies, the American government was actively involved, at a granular level, in the way that these same companies made their profits. In fact, the American government was involved in a more direct way with these synthetic entities than with citizens directly. Thus, in the reconfiguration that Proxmire and his colleagues urged, they directed the legislature to renegotiate the existing relationship through a transformation of the tax code.

---

[58] Senate Hearings, 4210
[59] Vogel, 60

Perhaps the independents' grudging change in attitude toward tax reform reflected an appreciation of these complex power dynamics. This marks a departure from the monolithic characterization of the oil industry. In a letter to the Senate dated October 6, 1969, the president of the Kansas Independent Oil and Gas Association (KIOGA) admitted that the H.R. 13270 contained "reasonal [sic] provisions for the small domestic independent operator." The letter was signed by Tom Schwinn, the vice-president of the organization who, just the preceding week had claimed that while he was in sympathy with the government in trying to close tax loopholes, argued that, "the methods proposed in both the House bill and by the Treasury to correct this situation, do not justify the drastic changes and penalties imposed upon the majority of legitimate oil and gas operators who are now paying a fair share of the necessary burden of the cost of government."[60] This contrasted directly with the statement that Schwinn submitted on behalf of KIOGA: "We recognize the imperative necessity for tax reform. The oil industry must bear a portion of the cost of this reform. The Proxmire amendment provides tax reform."[61] Schwinn's reversal of opinion seems oddly enthusiastic given his previous disavowal of change. I believe that the main reason given for this new support for the bill was due to the promise guaranteed by the Proxmire amendment that would attack the tax breaks given to the majors in addition to those taken away from the independents. The majors never managed to convey their support for the bill. That said, the elimination of the foreign tax credit that the domestically based independents sought did not actually materialize as a result of the 1969 reform; in fact, neither did the

[60] Senate Hearings, 4526
[61] Senate Hearings, 4237

elimination of foreign depletion. These were not to happen until the amendments made to the tax act in 1975.

Fairness underlay the arguments over the right of the government to change tax laws. In attempting to put all the taxpayers in the American economy on an equal playing field, legislators sought to understand the tax breaks enjoyed by corporations as if the corporations themselves were citizens; and thus divine a concept of fairness or equality from this analogy. As we have seen, this system of thought was stymied by the very fact that corporations played a different role in America than regular citizens. As a result of this focus on analyzing tax breaks as they related to function, a method of thought that rhetorically favored the independents, the language employed against the majors was harsh and incredibly critical. Legislators had clearly decided that eventhough the majors provided a massive service to the American nation, they could not with clean consciences permit the kinds of tax breaks that they had been receiving. Yet the way in which legislators came to the question of fairness needs analysis.

In attempting to deal with the problem posed by the corporation, given all of its economic and social functions, opponents of depletion sought to create a fair and just system by pruning tax breaks and loopholes. Congressmen and Senators definitely saw justice as being a force that could work through the tax code, but what was the basis of this fairness? These issues reinforce Horwitz's claim about the nature of the collective entity: there had not been any concrete way in which to cope with the corporation and determine its legal basis or place and therefore the basis upon which decisions about fairness were made was not based on some mathematically derived notion of cost. Rather the issues being debated within both Senate and Congress relied on a referendum on what a fair tax contribution by a corporation could and should be. As we can see there were clearly different standards that could be expected of the different players within the oil industry. The next section of this essay will look into the concepts of fairness by analyzing in a more detailed way the precise tax devices that the House sought to alter.

Taxation in Action: Enacting Citizenship

Let's face it – our tax laws as presently constituted soak the last penny from the ordinary citizens while allowing a privileged few, through devices such as the oil depletion allowance, to escape contributing their fair share to our national burden

Congressman Joseph Minish (D-NJ)[62]

In his speech to the Congress, Representative Joseph Minish, an active labor organizer and Democratic loyalist appealed to his colleagues' sense of justice to argue against the mineral depletion allowance. He called attention to the fact that oil companies had access to tax allowances that "ordinary citizens" did not, and that the way the tax break was structured ended up redistributing income from individuals to corporations and for that reason the "circumstances which originally caused the conferring of special incentives upon the oil industry in 1926 no longer prevail[ed]."[63] Minish added his voice to those of other reformers to make the claim that the existing tax code was an impediment to some kind of "fair" society, and that this was the case because of the very existence of tax shelters. Minish stands out as a voice of this period because he was one of very few legislators that wanted to completely eliminate depletion; that is for both majors and independents. His declamations relied on typical themes that all opponents of the tax break system relied upon: fairness and function. These two concepts were intimately related for the opponents of entrenched oil privileges, but how did these thinkers conceptualize fairness and why did they think that the oil corporations should be

[62] Congressional Hearings, *1969*, 3124
[63] Congressional Hearings, *1969*, 3124-3125

bound by its constraints? How did they think they were able to secure this through the tax code?

These questions can be answered by a close analysis of how these tax shelters worked. The percentage depletion allowance was fairly straightforward. The taxpayer would basically calculate his or her net income based on the revenues and costs for the fiscal year. From this amount, he would be able to deduct further amounts based on the number of tax breaks or deductions for which it qualified. In the case of the percentage depletion, assuming no other deductions – the taxpayer would subtract 27½ percent of that amount to arrive at his or her taxable income. The ABC transaction was a means of conveying property between three transactors: A, B and C. This method guaranteed the depletion allowance for two out of the three participants in the transaction. It was not so much the splitting of the right to depletion that riled opponents but that this transaction allowed participants to manufacture losses to limit the size of their taxable incomes, often in excess of the fifty percent limitation that governed the 27½ percent depletion.[64]

To counter depletion, legislators merely wished to minimize the size of the allowance; as for the ABC transaction, they wanted to abolish it completely by transforming the process into one akin to a mortgage. In attempting to deal with the ABC transaction, legislators became aware of a new power granted to them through an omission of the Supreme Court. It was this recognition that enabled them to re-categorize the ABC transaction as a debtor-creditor relationship and then go on to craft a vision of

[64] See Appendix I for a more thorough explanation of depletion, net limitation and the mechanics of the ABC transaction.

fairness much more in line with Ratner's beliefs about society than what the Supreme Court had been able to guarantee. It was this extra-legal conception of fairness that allowed them to properly combat the depletion allowance, despite constraints from outside of the political realm of tax codification.

Often, the first mistake in thinking about the ABC transaction is to think of it as the conveyance of a typical kind of property. However the ABC transaction was remarkable because it was a uniquely corporate way of holding property. This was based on a series of Supreme Court decisions from the 1930s.[65] These decisions conferred depletion to transactors B and C on the basis of the fact that they owned an "economic interest" in the oil property; that is, they both stood the chance to derive income from the exploitation of the lease. Thus B and C co-owned the oil lease and should be allowed the depletion. In doing so, legal scholar J. Reid Hambrick argued that the Supreme Court had essentially created a space where property rights were relegated to a "strictly secondary position" in deference to treating a mineral deposit like an "economic opportunity" that relied on the sharing of burden of discovery between lessor and lessee.[66] It must be made clear that this legal relationship did not rely for its force on the ownership of property; rather, it was the contractual obligation between parties, cooperating to exploit oil land that defined whether the taxpayer was able to qualify for statutory depletion. The production payment thus exhibited a new type of property relationship between economic actors.

[65] Burnet v. Harmel, 287 U.S. 103 (1932); Palmer v. Bender, U.S. 551 (1933); Thomas v. Perkins, 301 U.S. 655 (1937)
[66] Hambrick, 19, 20

When opponents of the transaction sought to re-codify the relationship between B and C as being one of debtor-creditor rather than co-owner, they sought to reverse a drastic shift in constitutional thought on the concept of property. Horwitz explains that in the period between the end of the late-nineteenth and early-twentieth centuries the Supreme Court was increasingly dealing with the dilemma of private property as "physicalist conceptions of property based on land ownership" moved to more abstract notions, which in turn laid the grounds under which "the very conception of property became infinitely expandable."[67] The production payment was the logical conclusion of the anti-physicalist conception of property. This was aided by a further development in Constitutional law: Miller argued that the "'liberty' protected by due process of law became the freedom to contract." Corporate thinking had transformed the basic concept of liberty from the idea of negative freedoms to that of positive rights. [68] Corporations could do as they pleased with the law because they had become empowered to do so. This was a fact brought increasingly to bear on the oil industry as more and more participants utilized the ABC transaction to purchase oil properties.

This new conception of property, however, did not sit well with opponents of the tax breaks because they rendered tax relationship incomprehensible. The joint ownership doctrine made it possible to propagate tax savings to a wide variety of individuals. This is what caused tax analyst Paul Haber to argue that the "real villains" in the tax system were not tools such as the depletion allowance but rather the devices that allowed for the

[67] Horowitz, 147-8, 151
[68] Miller, 45

translation of these tax benefits to other actors, such as the members of high-income brackets who somehow managed to buy into the benefits of the depletion allowance.[69] The creative corporate claim to co-ownership of property allowed the depletion allowance to be used in a variety of highly innovative instruments, which a variety of organizations and wealthy individuals could use to shrink the sizes of their taxable incomes. The artificial losses created by the transaction were well known; Nixon singled them out for reform in his speech to Congress, and mutual funds purchased them to minimize the paper size of their profits and tax strategists commonly demonstrated how to maximize the savings that could be gleaned from them.[70] Thus Congressmen and Senators criticized the production payments for being a means by which owners of such products could "circumvent the fifty percent limitation that can be taken under the statute, for percentage depletion."[71]

Oilmen were highly sensitive to the change that legislators wished to make. Wallace Wilson, Vice President of Continental Illinois National Bank and Trust Company, one of many voices in the oil industry faction, depicted the oil industry as victim of the "inconsistent opportunism" of a fickle government. He argued, essentially, that the government had no right to demonize the oil industry when it found that it was short of funds due to its own fiscal mismanagement, especially since the transaction was fully legal and protected under the aegis of the Supreme Court. By asserting that the production payment was supposed to be a transfer of ownership of property, the Treasury

[69] Haber, 776-784
[70] Congressional Hearings, *1969*, 5048; *Economist*, 38- 40; Minyard, 12, 292. Harold Harlan Hammer also urges the use of the production payment; see Hammer, 41, 42
[71] Congressional Hearings, *1969*, 3207; Senate Hearings, 78-79

sought to overturn the treatment of property rights and relationships that had come to define the oil industry almost from its advent to the moment of reform in 1969. Oilmen were very much aware of the stakes of this attack. Wallace Wilson, so vehemently objected to them that he argued that the production payment "create[d] only a property right, and not a debtor-creditor relationship," thus asserting a contemporary notion of property as it related to the oil and gas industry. For the government to overturn this arrangement would be wholly destabilizing and place the blame for the use of the transaction on the oil industry when in fact it was governmental regulations that had created the current state of affairs. [72]

Yet the irony of the situation was that because of the devolvement of economic decision-making to Congress, legislators were not bound by the same limitations as justices of the Supreme Court – the Constitution. Harold Rogers, the attorney who represented the North Texas Oil and Gas Association, wrote, "It may be worthy of note that while the proposed treatment of production payments was vigorously opposed by some witnesses at the Tax Reform Hearings, its constitutionality was apparently not questioned." Rogers's criticism of this approach to tax reform was that it allowed legislators to ignore the concept of due process as secured by the Fifth Amendment.[73] This is most certainly true. Rogers tacitly asserted that it was the role of the Supreme Court to adjudicate in matters of property. However, Rogers had not fully appreciated the shift within the Supreme Court that had been occurring from the late 1950s through the 1960s. Miller's argument over the changing nature of the questions to which the Supreme

[72] Congressional Hearings, *1969*, 3163
[73] Senate Hearings, 4621, 4615

Court applied itself necessitated Congress's intervention in matters of property.[74] For this very reason, the place of the tax code as means of communicating economic and property relationships to its constituents became increasingly important. Congress was not bound by the same necessity of interpreting property rights in light of the Constitution. It had much more room to improvise. Which is why it was able to combat the existing 27½ percent depletion.

Clearly, the debate over the status of the ABC transaction, while being one about how much tax a person ought to pay, was as much about who and why a person should pay their taxes, and on what grounds the government could even demand their payment. As a result this debate was one that went to the heart of the American state – the status of private property and the state's responsibility in guarding its integrity. The unique property ownership situation created by the ABC transaction could not be countered on legal grounds and did not really even need to be. Thus its adversaries crafted a critique of the arrangement on a conception of justice that existed outside of the legal realm. In order to do this convincingly, this assortment of politicians, academics and tax lawyers and accountants tended to analyze the role that these tax tools played in society. They sought to alter the tax code to better reflect a "fairer" vision of society. As per Minish's statements, these reformers argued that the exigencies of a fair society were more important than the supposed benefits rendered by the oil corporations.

[74] Miller, 14

Senator Proxmire argued for view of the corporation as a social actor, thus subjecting depletion to a higher standard than accounting efficacy. In doing so, he substituted the financial equivalency of supporters of the status quo and challenged it with a broader view of the role of the corporation. Proxmire's general approach to justifying his assault on mineral depletion was embodied in his sharp invective against the oil industry:

> Any tax system which requires 22 million people under the poverty level to pay Federal income taxes, yet allows Atlantic Richfield to earn over $465million between 1964 and 1967 without paying 1 red cent in Federal income taxes clearly requires revision[75]

That corporations managed to evade paying a proper amount of taxes was harmful to American citizens. He articulated a vision of fairness that rose above the proper adjudication of property interests but was grounded in deeper questions of what could be considered just. Proxmire, and his supporters, advocated the involvement of the government in protecting citizens from iniquities that had no relation to property. The oil companies' privilege was funded through a regressive redistributive process. As far as they were concerned, it was to be the responsibility of the government to correct this massive oversight despite having granted it in the first place.

The intellectual powerhouse of progressive taxation – Stanley Surrey – sought to place the oil taxes in the context of a framework larger than simply accounting fairly for eroding assets. As part of a thought experiment he suggested thinking about tax incentives as if they were programs that the government directly subsidized or to think of tax expenditures as direct expenditures. The conclusion he reached was that tax

[75] Senate Hearings, 4208

incentives appeared "highly irrational when phrased as direct expenditure programs."[76] By likening the tax expenditures to a subsidy program Surrey identified the extent to which governmental forces were involved in the inner workings of the oil industry. An essay from 1966 argued that, "since the present scheme of depletion was designed to compensate for the risk involved in exploration and to furnish an incentive for initial investments, the reward of percentage depletion should only be given to those who are actually responsible for the development of the property."[77] The functionalist view was not new to thinking on taxes. In his article decrying the blatant pandering to special interests in the Tax Reform of 1954, Michael Cary argued that the independent oil producer should have access to depletion only because of the risk that he took on in drilling potentially dry holes.[78] B *should* be allowed the depletion deduction because he carried most of the risk for the development of risky oil properties. Since C did not shoulder any of the risk in the discovery of oil, he did not deserve to be compensated through the mechanism of the tax incentive.

If tax incentives were tied to function, then it became very hard to defend the 27½ percent depletion on any grounds other than financial – and even then this was a tough sell. It would seem that the reduction of the mineral depletion would be an attack on the oil industry in toto, but this change would affect the major oil producers most acutely. Mineral depletion only worked at the full 27½ percent rate if the amount that was being deducted from gross income was less than fifty percent of net income before the tax

[76] Surrey, 722
[77] UPLR, 610
[78] Cary, 761-762

deduction. Thus for a firm to deduct the full amount, their net incomes had to be of substantial amounts. One of the biggest complaints about depletion from the independent oil operators was that they were not able to take full advantage of the statutory rates.[79] Indeed a number of them urged an increase in the net limitation during this reform about reducing tax incentives, and in the particular case of the President of the Oklahoma Independent Producers Association, a complete abolition.[80] Independent operators did not have the wide enough capital bases to take advantage fully of depreciation. For this reason, any attack on depletion affected the majors much more than it was the independents.

In case there was any ambiguity Congressman Minish pointed out that, "two-thirds of the depletion allowances are claimed by companies with assets of over a quarter of a billion dollars."[81] This was clearly not a reference to the small producers who sold oil at wellhead costs to distributors, but to the major integrated companies that could not only dig up oil but also market it cheaply, relative to the domestic, often independent oil producers. Which is why Proxmire's allegation, based on the industrially despised CONSAD report, that the depletion allowance resulted in "deductions about 19 times in excess of actual costs," was so chillingly disturbing.[82] The majors' strident objections to ending depletion suddenly made more sense.

---

[79] Congressional Hearings, *1969*, 3273, 3282, 3292, 3320
[80] Senate Hearings, 4493
[81] Congressional Hearings, *1969*, 3124-3125
[82] Senate Hearings, 4224

The reason that the majors accounted for so much legislative ire was that they received huge breaks in their overseas operations through domestic tax breaks. Assistant Secretary Cohen informed, "the special problem connected with foreign mineral income which can and should be dealt with arises from the lower effective U.S. rate on mineral production resulting from our percentage depletion incentive."[83] Cohen specifically referred to the foreign tax credit received by the majors, which provided an exemption on taxes paid overseas from being included in the taxable base of a corporation, used in combination with percentage depletion. The majors were able to qualify for both of these exemptions that made foreign oil even cheaper than domestically-sources oil. The presence of both neutralized the fuel security that was supposed to be provided by a healthy domestic industry. Not only this, but they exacerbated the problem of resource allocation to foreign countries, guaranteeing the retrogression of the domestic oil industry. Any repeal on depletion motivated by American decisions would automatically affect the profits of oil companies overseas and would need to be paired with an attack on the foreign income tax credit. There really could be no point this combination of tax breaks beyond Emilio Collado's obviously specious argument that it somehow aided national security by allowing American corporations to be internationally competitive.[84]

If the point of standard depletion was to compensate for mechanical degradation, which occurred over a finite period, then what was the government subsidizing when it permitted large oil properties that might produce oil for many years? In likening the tax breaks received by corporations, opponents of oil tax breaks definitely fell victim to the

[83] Senate Hearings, 595
[84] Senate Hearings, 4416

trap of corporate citizenship that the proponents did. However the effects of this were somewhat mitigated by their focus on the function that these tax breaks played in society. It was from this focus that they were able to articulate a vision of tax equity. When politicians such as Minish and Proxmire brought up the idea of fairness, they challenged the view that corporations were beneficial to America simply because they enriched her.[85] They argued that the government was too closely identified with the cause of the corporation to the abstraction of its real duties – fairness to regular citizens. The attack on the depletion allowance was thus an assault on this close-knit relationship between the state and the corporation on the grounds that the state was too involved in the financial standing of the corporation. The assertion made by proponents of the tax reform of the oil industry was that it was not the government's place to be so deeply embedded within the social standing of the oil industry, especially if it subsidized the majors.

This is not to say that the reform was an unqualified success nor that the analytic strength of the idea of equity carried the day. After Minish, there were no voices of any significance that urged the complete eradication of the depletion allowance. Indeed the vacillation between lowering and raising the depletion allowance clarifies this unfortunate dynamic further. While it was clear that the House sought to establish the place of the corporation through manipulation of the tax code, what was not clear, however, was why Congress thought that a 7½ percent cut was fair, and if that was fair then why they accepted an upward revision to twenty-two percent when the bill was finally passed into law after being amended by the Senate. The conclusion we must draw

[85] Micklethwait & Wooldridge, 77

from this is that the ultimate point of settlement at twenty-two percent was not calculated according to a precise estimation of the exact monetary/social contribution to American society. Instead it reflected the political trading between opponents and proponents in the same way that the original 27½ percent had been computed. Legal analyst Paul Dodyk clearly stated his disappointment: "due to the limitations imposed upon the Treasury's reformist aspirations by the maelstrom of political force encountered. The reduction of oil and gas depletion by 5½ % and of the depletion of other minerals by 1% or nothing, when faithful homage to the comprehensive tax base would have indicated the abolition of percentage depletion altogether, is symptomatic of this dimension of the Reform Act's limitations." [86] Rather than the quantity of the deduction, for reformers the most that could be done to constrain tax breaks was a minute reduction.

To be clear, the government was, and is, deeply embedded within the operations of corporations as is made clear in the case of the oil industry. Despite cries about excessive intervention in the private sector by oil corporations themselves, the government had/ has always played a role in the continued success (read, skyrocketing profits) of the oil industry. Once H.R. 13270 passed through Congress and went up to the Senate, Senate Finance Committee Chairman, Russell Long (D-LA) felt the need to clarify with Secretary of the Treasury David Kennedy that H.R. 13270 was not, in fact, "anything other than an extremely anti-oil bill."[87] It is not altogether clear that this anxiety was well placed.

[86] Dodyk, 775, 761
[87] Senate Hearings, 502

Reflections on 1969

Oil politics went beyond the numbers; to these legislators from the oil-producing states, it was almost a religious matter. Passions ran high when oil was discussed, and reason was cast to the wind. The assembled senators were ready to fight to kill the bill if they did not get their way.

Jeffrey Birnbaum and Alan Murray on the 1986 tax reform[88]

Zelizer points out that the 1969 moment was not a dramatic shift in tax legislation as it related to the oil industry because the "Tax Reform Act of 1969 did not attempt to eliminate the tax-break system, only to reform and control it. Most tax shelters were reduced or tightened but not eliminated, as seen in the lowering of the oil depletion allowance."[89] Journalists Jeffrey Birnbaum and Alan Murray support this view and see the 1969 reform as a tentative step in the right direction, as far as tax breaks were concerned, but one where reforms were transient and ultimately ineffective until the real moment of decisive change – 1986.[90] That the very concept of the tax break itself had not been questioned was the most disturbing outcome of the 1969 act. Instead, despite the harsh economic climate, politicians, even the most strident opponents of reform, had decided that the tax breaks themselves could not be entirely eliminated, but merely constrained. To be fair, this was not actually challenged in 1986, either.

It was not clear that even this tempered conclusion registered with the oil companies that only understood that two fairly important tax privileges had been eliminated. The Oil and Gas Journal discerned a clear shift in the government's relationship with the oil industry when it reported that the oil industry "took [tax reform]

[88] Birnbaum and Murray, 228
[89] Zelizer, 309
[90] Birnbaum and Murray, 15-16

on the chin." They blamed this fate on inexplicable about-face of Congressman Hale Boggs (D-LA) who had suddenly gone savage on industry breaks that he had previously supported. Perhaps what was so surprising to the writers of this industry newspaper was the fact that the oil industry had been caught so completely off-guard.[91] It went on to report in August that Russell Long had wanted to return the depletion from 20 percent to 27½ when the bill reached the Senate – which was patently not true. The Oil and Gas Journal gloomily reported that in "view of the prevailing atmosphere, however, oil-state congressmen and senators privately doubt this is possible. Unless reform is somehow blocked in the Senate, details will be solved in conference."[92] The Journal depicted the "prevailing atmosphere" as something totally different from previous situations.

The House Ways and Means Committee, of course, was systemically predisposed towards not rocking the boat, as pointed out by John Manley in his sociological study of this most powerful of committees.[93] So it was nothing short of extraordinary that these Congressmen had suggested a bill that attacked a previously sacrosanct tax break, a tax break, as noted earlier, that governed their admission to the committee in the first place. In addition to the commonly held assumption that the House really controlled the conferencing process, the proponents of the industry tax breaks had good reason to be scared. Perhaps even more shocking was the fact that this bill had such vociferous support within the Senate. Senator Proxmire's muckraking on 1969 was reminiscent of his efforts during the Kennedy revenue crisis of 1962. Gilles claims that, "Prior to 1958

[91] OGJ, 67, Jul. 1969, 108
[92] OGJ, 67, Aug. 1969, 93
[93]Manley, 49

not even the required 10 senators would support a roll-call vote," and in 1962 there had been an overwhelming majority vote to keep mineral depletion in place.[94] Thus the much-vaunted ability of the conservative elements of the Senate Finance Committee to protect the interests of businesses appeared to be less and less likely to be brought to bear.[95] Still, the edifice of the tax break system forced itself through.

This persistence paints the protestations of the oil industry in an especially churlish light. How could the most strident opponents of oil industry privileges think that a 5½ percent reduction made an actual dent in the tax savings of these firms? The simple solution is that they did not. Instead, in the continuation of tax privileges through the proliferation of loopholes, perhaps the state sought to achieve its own goals through the operations of the corporation. This cooperation had its roots in the end of the Second World War. Historian David Sicilia contends that even as the government partnered with the firms in the tobacco, chemical and nuclear industries, it created various regulatory agencies to act as oversight for these exact entities. He argues that the "new social regulation of the late 1960s and early 1970s was one of the nation's great state-building projects."[96] The cost of this expansion was born by corporations. The relationship between the government and the corporation was a tug-of-war between accommodation and control. There is certainly evidence to support Sicilia's claim of the changing nature of the government to the oil industry. It was the detailed and concerted assault on the majors that set the groundwork for the 1974 repeal of foreign depletion, thanks

[94]Gilles, 781, fn 14; Martin, 74
[95] Manley, 49
[96] Lipartito and Sicilia, 202

principally to the distinction made in the 1969 act between majors and independents – a distinction that was cemented in 1975.[97] The 1975 repeal of all foreign depletion for the majors was the culmination of this campaign, aided, no doubt, by the oil crisis of 1973.

However, it would be wrong to categorize the evolving relationship between the American government and the corporation as some kind of progressive triumph. The notion of constraint for Sicilia focuses on the increased power of litigation to coerce corporations to behave in a socially desirable fashion. Yet Sicilia is only able to explain what is socially desirable in the context of industries that create products which can actually be harmful, or which have harmful byproducts and not to the amorphous ills of an uneven tax structure. This was secured through the legal concept of "enterprise liability" which relegated producers of products to bearing the brunt of the blame for the harm caused in the use of his products.[98] His reliance on enterprise liability breaks down when applied to the oil industry and their tax privileges. The "harm" perpetuated by this system was not legally analogous to products that literally could hurt people. It was much more subtle.

For Arthur Miller, writing in 1976, the real harm was the damages to Constitutional protections guaranteed to individuals. To focus on the assault on these tax breaks would be to miss the forest for the trees. He argues that the real effect on tort law of the increasing appearance of corporate personalities was that the law itself was transformed into a "pressure-group device" bolstered, as well as fed, by corporate

[97] Goodwyn, 133
[98] Lipartito and Sicilia, 211

gigantism. Individuals would have to organize themselves into very large groups to compete with corporations on equal footing. Vogel corroborates this claim when he discusses the importance of corporate interests in determining state politics: “The more important reason public officials display so much deference to the preferences of corporate executives is that the economic viability of particular communities, regions, and the nation as a whole are largely dependent on the rate and location of corporate investment.”[99] The complicity of the government in the growing power of the corporate entity is unavoidable, especially in the face of a civilian population unable to amass as much centralized control, authority or funding as the modern corporation. Through generous interpretations of corporate law in anti-trust proceedings and more generally in the sponsorship of such enterprise, the Supreme Court and legislators “permit the public to believe that something is being done about giant enterprise, while simultaneously allowing corporate managers to expand and operate almost at will.”[100] This is especially troubling in the context of contemporary American civil society, because it makes it impossible for courts and legal institutions to untangle citizenship from its connection to corporate power which usurps the rights of citizenship from citizens themselves.

If nothing else, the Tax Reform Act of 1969 displays this depressing dynamic. The hearings of 1969 changed, for a time, the way that Congress would treat the oil industry. Opponents of tax loopholes increasingly drew on a conceptualization of the “social good” as one in which tax breaks served a function to a society larger than the individual industries that they benefited. They argued that the proper relationship

[99] Vogel, 156
[100] Miller, 49, 66

between the government and the corporation should not be as intertwined and complicit as was clearly the case in the ABC transaction and the highly profitable mineral depletion allowance. If anything, the corporation was to be held at the same distance from government as regular citizens, if not further. As argued in this essay, Congress made a distinction between the big and small business based on what was an acceptable level of state adjudication in a profit-seeking enterprise. The assault on the ABC transaction was one that managed to expunge a notorious tax-break from the tax code. Even though it principally affected the independents, we have seen how this was not a direct assault on the independent companies similar to the attack on mineral depletion directly affected the majors. The independents lost out on a cheap source of financing and lost the ability to artificially create losses. Legislators had, however, created a precedent to attack the favorite tax break of the majors in the future.

The starvation from petroleum that the oil industry threatened in 1969 did not actually occur and set the stage for further attacks on not just foreign depletion but also the foreign tax credit that majors still managed to hold onto in 1969. The 1969 tax act was an odd moment in American history that was to be increasingly rare as the century progressed. It was a moment where Congress genuinely attempted to formulate an understanding of how to account for the corporation as a form of collective property holding in America. The movement had some small success, but in the long run, did little to solve the problem of how to deal with the corporation in America. In fact, by rhetorically confusing individuals and corporations, reforms might have only blurred further an already indistinct relationship.

Appendix I:

Depletion

The way depletion usually works in a financial setting is to compensate the owners of capital for the fact that the machines that they use inevitably become less effective. Depletion always assigns a fictional amount by which a machine's value has been eroded through use for a fixed period, and this value is subtracted as though t were a cost when calculating net income. The purpose of the depletion is to ensure that owners of such equipment pay taxes in accordance with the fact that they will eventually have to purchase new machinery to replace the machinery that is depleted through use. The government is sensitive to this requirement of business. By not depleting the value of the machines, their taxable incomes would be artificially inflated. In a sense, depletion allows firms to not pay taxes on machinery.

The mineral depletion allowance sought to treat oil properties as if they were the same kinds of machines. By foregoing a portion of income that would ordinarily be subject to governmental confiscation, the government was actively subsidizing oil companies, especially since large incomes from some fields could completely offset the income from other fields. Another crucial difference between the mineral depletion and the standardized depletion accorded to machinery was that standard depletion could only be claimed for finite periods in time, whereas percentage (mineral) depletion could be for as long as a well was active.

Net Limitation

The Net Limitation was a statutory limit placed on the amount of depletion the owner of an oil property could claim. The limitation basically allowed the owner of the oil property to deduct 27½ percent of their *gross incomes* (total revenues less total costs) provided that the total amount claimed did not exceed fifty percent of *net income* (gross income less depreciation, dividends etc). The best way to illustrate this is with an example.

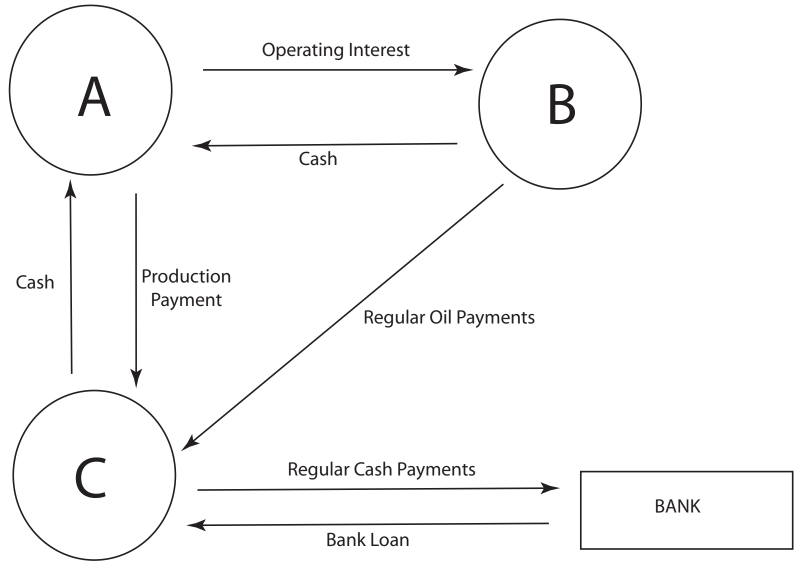
Thus if the oil property generated $1,000,000 of gross income, the statutory depletion would be $275,000. However, if the net income of the property were $500,000, then the maximum depletion that could be claimed would be $250,000. Because the mineral depletion relied on the concept of income for it to work, he legal debates that ensued, therefore, centered on how to characterize whether the producer of oil was, in fact, receiving income.

ABC Transaction

The transaction was so named because it involved three distinct parties: A – the seller of an oil property, B – the buyer of the oil property, and, C – the buyer of a production payment. A basically would split the oil property into two transactional units: 1) the "operating interest" which would be sold to B, and, 2) the "production payment" or "carved-out production payment", including an interest factor, which would be sold to C. The "operating interest" allowed B to extract the minerals on the entire property. B would then have to make regular payments to the owner of the production payment (C) out of the oil that he had extracted from the property. The main attraction of the ABC transaction was that it allowed B to purchase the entire property at a low price with very little cash and allowed C to reap very substantial tax savings.

A highly simplified ABC transaction might work in the following way. The oil property might be worth $3 million. A would sell the operating interest to B for $1 million and a production payment to C for $2 million. A emerged from the transaction $3 million richer. B walked away with an oil property worth $3 million only having put $1 million on the table; however, he incurred a “debt” of $2 million in the form of the production payment that he would have to pay off to C in regular installments with the oil received from the property. Thus as the owner of the production payment, C received the income from these oil payments at regular intervals. C usually financed the purchase of the production payment with a bank loan. Figure 1, below, summarizes the flow of funds in the transaction.

Fig. 1



The point of the transaction for C is crucial to understand. Even though C earned income from the regular production payments in excess of the interest rate it paid to the bank, the transaction created net losses for C because of the way the depletion allowance worked. This was the desired outcome, because it allowed C to reduce the size of his taxable income and thus reduce the final amount of taxes that he would pay.

It was precisely this co-ownership of an economic interest that created the market for production payments. The purchaser of the production payment was able to receive income from the oil property and deduct a portion of that income from his overall gross income, thus reducing his taxable income. In his Journal of Taxation article entitled "How to Determine the Tax Saving That Makes an ABC Deal Worthwhile," E.L Minyard illustrates this tax-saving empirically. He advised his readers that if they had "substantial ordinary income which [was] not expected to decrease materially in the next few years, [they] could purchase a production payment, use this formula, and, when the production payment began to produce a taxable profit, could sell the payment for the unpaid principal balance" and that this profit would incur "favorable capital gain treatment."[101]

[101] Minyard, 292

Bibliography

Birnbaum, J and Murray, A. *Showdown at Gucci Gulch: Lawmakers, Lobbyists, and the Unlikely Triumph of Tax Reform*. New York: Random House, Inc. 1987.

Cary, William L. "Pressure Groups And the Revenue Code: A Requiem in Honor Of the Departing Uniformity of the Tax Laws." *Harvard Law Review* Vol. 68, No. 5 (Mar., 1955). 745-780.

Chandler, Alfred D. *The Visible Hand: The Managerial Revolution in American Business*. Cambridge: Belknap Press of Harvard University Press, 1977.

Dodd, Nigel. *The Sociology of Money: Economics, Reason and Contemporary Society.* Cambridge: Polity Press, 1994.

Dodyk, Paul M. "The Tax Reform Act of 1969 and the Poor." *Columbia Law Review* Vol. 71, No. 5 (May, 1971). 758-802.

Goodwyn, Lawrence. *Texas Oil, American Dreams: A Study of the Texas Independent Producers and Royalty Owners Association*. Texas: Texas State Historical Association, 1996.

Haber, Paul. "Writeoffs, Cost Depletion, and Percentage Depletion, An Appraisal." In Gilles, L.H., Jr. "Statutory Depletion – Subsidy in Disguise?" *The Accounting Review* Vol. 38, No. 4 (Oct. 1963). 776-784.

Hambrick, J.R., "Another Look at Some Old Problems – Percentage Depletion and the ABC Transaction". *George Washington Law Review* Vol. 34, (1965-1966): 1-52.

Hammer, H. H., " ABCs of Oil Payments: Their Value From the Investor's Viewpoint", *The Analysts Journal*, Vol. 10, No. 4 (Aug., 1954). 41-45.

Hogan, Michael J. "Informal Entente: Public Policy and Private Management in Anglo-American Petroleum Affairs, 1918-24," Business History Review, 48 (Summer 1974): 187-205.

Horwitz, Morton J. *The Transformation of American Law, 1870-1960: The Crisis of Legal Orthodoxy.* New York: Oxford University Press, Inc., 1992.

Howard, Christopher. *The Hidden Welfare State: Tax Expenditures and Social Policy in the United States*. Princeton: Princeton University Press, 1997.

Kirkpatick, David D. "Lobbyists Get Potent Weapon In Campaign Ruling." *New York Times*. New York Times, 21 January, 2010. Web. http://www.nytimes.com/2010/01/22/us/politics/22donate.html?fta=y

Lewis, Ronald L. *Transforming the Appalachian Countryside: Railroads, Deforestation, and Social Change in West Virginia, 1880-1920.* Chapel Hill: The University of North Carolina Press, 1998.

Lipartito, Kenneth and Sicilia, David B, "Introduction: Crossing Corporate Boundaries." *Constructing Corporate America: History, Politics, Culture*. Lipartito, Kenneth and Sicilia, David B. (Eds.) Oxford: Oxford University Press, 2004.

Liptak, Adam. "Justices, 5-4. Reject Corporate Spending Limit." *New York Times*. New York Times, 21 January 2010. Web. http://www.nytimes.com/2010/01/22/us/politics/22scotus.html

Manley, John F. *The Politics of Finance: The House Committee on Ways and Means.* Boston: Little Brown and Company, 1970.

Martin, Cathie J. *Shifting the Burden: The Struggle Over Growth and Corporate Taxation*. Chicago: The University of Chicago Press, 1991.

Matusow, Allen. *Nixon's Economy: Booms, Busts, Dollars and Votes*. Lawrence: University Press of Kansas, 1998.

Mickelthwait, John and Wooldridge, Adrian. *The Company: A Short History of a Revolutionary Idea.* New York: Modern Library, 2003.

Miller, Arthur Selwyn. *The Modern Corporate State: Private Governments and the American Constitution.* Connecticut: Greenwood Press, 1976.

Minyard, E.L. "How to Determine the Tax Saving that Makes an ABC Deal Worthwhile". *The Journal of Taxation* Vol. 12 (May 1960). 290-293.

Ratner, Sidney. *Taxation and Democracy in America*. New York: John Wiley & Sons, 1967.

Schulzinger, Robert D. *U.S. Diplomacy Since 1900, 6th Edition*. Oxford: Oxford University Press, 2008.

Surrey, Stanley S. "Tax Incentives as a Device for Implementing Government Policy: A comparison with Direct Government Expenditures." *Harvard Law Review* Vol. 83, No. 4 (Feb., 1970). 705-738.

Sutter, John D. "Topeka 'renames' itself 'Google, Kansas.'" *CNN Tech*. CNN Online, 2 March, 2010. Web.

The Economist. "Drilling Against Taxes". *The Economist (London)* Vol. 231 (May 1969). 38- 40.

U.S. Congress, House Committee on Ways and Means, *President's 1967 Tax Proposals*, 90th Cong., 2nd sess., 1967. Washington, D.C.: GPO, 1967.

U.S. Congress, Senate Committee on Finance. *Hearings before the Committee on Finance on H.R. 13270 to Reform the Income Tax Laws*, 91st Cong., 1st sess., 1969. Washington, D.C.: GPO, 1969.

U.S. Congress, House Committee on Ways and Means, *Tax Reform, 1969:Hearings*, 91st Cong., 1st sess., 1969. Washington, D.C.: GPO, 1969.

Vogel, David. *Kindred Strangers: The Uneasy Relationship Between Politics and Business in America*. Princeton: Princeton University Press, 1996.

Witte, John. *The Politics and Development of the Federal Income Tax.* Wisconsin: The University of Wisconsin Press, 1985.

Yergin, Daniel. *The Prize: The Epic Quest for Oil, Money, and Power.* New York: Simon and Schuster, 1991.

Zelizer, Julian. *Taxing America: Wilbur D Mills, Congress and the State, 1945-1975.* Cambridge: Cambridge University Press, 1998.

"Taxing the ABC Transaction: A Suggested Approach." *University of Pennsylvania Law Review* Vol. 114, No. 4 (Feb., 1966). 588-613. (UPLR)

"Ways and Means Lands Stunning Blow." *The Oil and Gas Journal* Vol. 67 (Jul., 1969). 108. (OGJ)

"Oil Facing $600-million tax increase." *The Oil and Gas Journal* Vol. 67 (Aug., 1969). 91-93.